

1 EDNA GARCIA EARLEY, Bar No. 195661  
STATE OF CALIFORNIA  
2 DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
3 320 W. 4th Street, Suite 430  
Los Angeles, California 90013  
4 Telephone: (213) 897-1511  
Facsimile: (213) 897-2877

5 Attorney for the Labor Commissioner  
6  
7

8 BEFORE THE LABOR COMMISSIONER  
9 OF THE STATE OF CALIFORNIA  
10

11 LEE JAMES,

12  
13 Petitioner,

14 vs.

15  
16 DONNA BRYAN,

17 Respondent.  
18

CASE NO. TAC 4699

**DETERMINATION OF  
CONTROVERSY**

19 The above-captioned matter, a Petition to Determine Controversy under  
20 Labor Code §1700.44, came on regularly for hearing on July 10, 2008 in Los Angeles,  
21 California, before the undersigned attorney for the Labor Commissioner assigned to hear  
22 this case. Petitioner LEE JAMES ("Petitioner") appeared represented by Glen Litwak,  
23 Esq. of Law Offices of Litwak and Havkin. Respondent DONNA BRYAN, (hereinafter,  
24 "Respondent"), who was personally served with the Petition to Determine Controversy on  
25 September 10, 2007, failed to appear but submitted an Answer to the Petition on October  
26 12, 2007, faxed a Request for Continuance on July 9, 2009 and faxed a Motion to Dismiss  
27 (based on the statute of limitations) on July 10, 2008, the date of the hearing. Respondent  
28

1 failed to serve Petitioner with a copy of the Motion to Dismiss. As such, the Motion to  
2 Dismiss will not be considered. Richard Donato, who was subpoenaed by Petitioner,  
3 appeared as a witness.

4 Based on the evidence presented at this hearing and on the other papers on  
5 file in this matter, the Labor Commissioner hereby adopts the following decision.

### 6 FINDINGS OF FACT

7 1. Petitioner, a resident of California, is a singer and recording artist who  
8 performs in his own band named "*Fear*."

9 2. Respondent is a resident of the State of Alabama. At no time relevant to  
10 these proceedings has Respondent been a licensed talent agent in the State of California.

11 3. The parties entered into an *Artist Management Contract* ("management  
12 contract") on April 20, 2005 for a two year term. The management contract is the subject  
13 of a breach of contract action filed in Alabama by Respondent against Petitioner. The  
14 civil action is stayed pending resolution of this matter. Petitioner seeks to void the  
15 management contract on the grounds that Respondent procured work in California for him  
16 without having first obtained a talent agency license from the Labor Commissioner.

17 4. Specifically, Petitioner contends that Respondent telephonically procured  
18 and negotiated a contract with Promoter Richard "Dick" Donato of EvelDick Productions,  
19 for *Fear* to perform on Saturday, October 29, 2005 at the Grand Olympic Auditorium  
20 ("Halloween concert"). Petitioner submitted a contract for this event showing that it was  
21 signed by Respondent. Petitioner testified that during the time the Halloween concert was  
22 booked, his band did not have a booking agent.

23 5. Richard Donato aka Dick Donato, who was subpoenaed as a witness by  
24 Petitioner, is a promoter who owns EvelDick Productions. Mr. Donato admitted that he  
25 negotiated the Halloween concert contract directly with Respondent. Mr. Donato also  
26 testified that he dealt only with Respondent on this deal because he felt Petitioner was too  
27 difficult to deal with directly.

28 ///



1 initiated by Respondent against Petitioner in the State of Alabama. Accordingly, we find,  
2 as the California Supreme Court found in *Styne v. Stevens* (2001) 26 Cal.4<sup>th</sup> 42, 54, “that  
3 the statute of limitations set forth in section 1700.44(c) does not bar [Petitioner’s]  
4 assertion of his contract defense based on [Respondent’s] alleged violation of the Talent  
5 Agencies Act.”

6 6. Respondent also argues that this action is barred under the doctrine of  
7 waiver because Petitioner has instituted and dismissed two prior lawsuits against  
8 Respondent in the Superior Court of California during the last eighteen months.  
9 Respondent claims that the first lawsuit was voluntarily dismissed by Petitioner and that  
10 the second lawsuit was dismissed for lack of personal jurisdiction. We find this argument  
11 to be without merit since the Labor Commissioner has exclusive jurisdiction over  
12 controversies arising under the Talent Agencies Act, and this is the first time Petitioner  
13 has filed a petition against Respondent with the Labor Commissioner.

14 7. “[A]n agreement that violates the licensing requirements is illegal and  
15 unenforceable...” *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4<sup>th</sup> 246,  
16 262. Accordingly, the management contract between the parties is deemed void *ab initio*  
17 based on Respondent’s violation of the Act.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

For the reasons set forth above, IT IS HEREBY ORDERED that the *Artist Management Contract* entered into between Petitioner and Respondent on April 20, 2005 is deemed void *ab initio*.

DATED: August 29, 2008

Respectfully submitted,

By:   
EDNA GARCIA EARLEY  
Attorneys for the Labor Commissioner

ADOPTED AS THE DETERMINATION OF THE LABOR COMMISSIONER

Dated: 9-9-8

By:   
ANGELA BRADSTREET  
State Labor Commissioner

